

Part 6A. Medicaid Recipient Appeals Process.

§ 108A-70.9A. Appeals by Medicaid recipients.

(a) Definitions. – The following definitions apply in this Part, unless the context clearly requires otherwise.

- (1) Adverse determination. – A determination by the Department to deny, terminate, suspend, or reduce a Medicaid service or an authorization for a Medicaid service.
- (2) OAH. – The Office of Administrative Hearings.
- (3) Recipient. – A recipient and the recipient's parent, guardian, or legal representative, unless otherwise specified.

(b) General Rule. – Notwithstanding any provision of State law or rules to the contrary, this section shall govern the process used by a Medicaid recipient to appeal an adverse determination made by the Department.

(c) Notice. – Except as otherwise provided by federal law or regulation, at least 10 days before the effective date of an adverse determination, the Department shall notify the recipient, and the provider, if applicable, in writing of the adverse determination and of the recipient's right to appeal the adverse determination. The Department shall not be required to notify a recipient's parent, guardian, or legal representative unless the recipient's parent, guardian, or legal representative has requested in writing to receive the notice. The notice shall be mailed on the date indicated on the notice as the date of the determination. The notice shall include:

- (1) An identification of the recipient whose services are being affected by the adverse determination, including the recipient's full name and Medicaid identification number.
- (2) An explanation of what service is being denied, terminated, suspended, or reduced and the reason for the determination.
- (3) The specific regulation, statute, or medical policy that supports or requires the adverse determination.
- (4) The effective date of the adverse determination.
- (5) An explanation of the recipient's right to appeal the Department's adverse determination in an evidentiary hearing before an administrative law judge.
- (6) An explanation of how the recipient can request a hearing and a statement that the recipient may represent himself or herself or use legal counsel, a relative, or other spokesperson.
- (7) A statement that the recipient will continue to receive Medicaid services at the level provided on the day immediately preceding the Department's adverse determination or the amount requested by the recipient, whichever is less, if the recipient requests a hearing before the effective date of the adverse determination. The services shall continue until the hearing is completed and a final decision is rendered.
- (8) The name and telephone number of a contact person at the Department to respond in a timely fashion to the recipient's questions.
- (9) The telephone number by which the recipient may contact a Legal Aid/Legal Services office.
- (10) The appeal request form described in subsection (e) of this section that the recipient may use to request a hearing.

(d) Appeals. – Except as provided by this section and G.S. 108A-70.9B, a request for a hearing to appeal an adverse determination of the Department under this section is a contested case subject to the provisions of Article 3 of Chapter 150B of the General Statutes. The recipient shall request a hearing within 30 days of the mailing of the notice required by

subsection (c) of this section by sending an appeal request form to OAH and the Department. Where a request for hearing concerns the reduction, modification, or termination of Medicaid services, including the failure to act upon a timely request for reauthorization with reasonable promptness, upon the receipt of a timely appeal, the Department shall reinstate the services to the level or manner prior to action by the Department as permitted by federal law or regulation. The Department shall immediately forward a copy of the notice to OAH electronically. The information contained in the notice is confidential unless the recipient appeals. OAH may dispose of the records after one year. The Department may not influence, limit, or interfere with the recipient's decision to request a hearing.

(e) **Appeal Request Form.** – Along with the notice required by subsection (c) of this section, the Department shall also provide the recipient with an appeal request form which shall be no more than one side of one page. The form shall include the following:

- (1) A statement that in order to request an appeal, the recipient must send the form by mail or fax to the address or fax number listed on the form within 30 days of mailing of the notice.
- (2) The recipient's name, address, telephone number, and Medicaid identification number.
- (3) A preprinted statement that indicates that the recipient would like to appeal the specific adverse determination of which the recipient was notified in the notice.
- (4) A statement informing the recipient that he or she may choose to be represented by a lawyer, a relative, a friend, or other spokesperson.
- (5) A space for the recipient's signature and date.

(f) **Final Decision.** – After a hearing before an administrative law judge, the judge shall return the decision to the Department in accordance with G.S. 150B-37. The Department shall notify the recipient of the final decision and of the right to judicial review of the decision pursuant to Article 4 of Chapter 150B of the General Statutes. (2010-31, s. 10.30(a); 2011-398, s. 32.)